

# Union Calendar No. 131

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3269

**[Report No. 111-236]**

To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2009

Mr. FRANK of Massachusetts (for himself, Mr. PETERS, Ms. KILROY, Mr. WATT, Mr. CAPUANO, Mr. AL GREEN of Texas, Mr. SHERMAN, Mr. CARSON of Indiana, Mr. GUTIERREZ, Mr. ELLISON, and Mr. HINOJOSA) introduced the following bill; which was referred to the Committee on Financial Services

JULY 30, 2009

Additional sponsor: Ms. WATERS

JULY 30, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on July 21, 2009]

# **A BILL**

To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       *This Act may be cited as the “Corporate and Financial*  
 5       *Institution Compensation Fairness Act of 2009”.*

6       **SEC. 2. SHAREHOLDER VOTE ON EXECUTIVE COMPENSA-**  
 7               **TION DISCLOSURES.**

8       *(a) AMENDMENT.—Section 14 of the Securities Ex-*  
 9       *change Act of 1934 (15 U.S.C. 78n) is amended by adding*  
 10       *at the end the following new subsection:*

11       *“(i) ANNUAL SHAREHOLDER APPROVAL OF EXECU-*  
 12       *TIVE COMPENSATION.—*

13               *“(1) ANNUAL VOTE.—Any proxy or consent or*  
 14       *authorization (the solicitation of which is subject to*  
 15       *the rules of the Commission pursuant to subsection*  
 16       *(a)) for an annual meeting of the shareholders to elect*  
 17       *directors (or a special meeting in lieu of such meet-*  
 18       *ing) where proxies are solicited in respect of any secu-*  
 19       *rity registered under section 12 occurring on or after*  
 20       *the date that is 6 months after the date on which*  
 21       *final rules are issued under paragraph (4), shall pro-*  
 22       *vide for a separate shareholder vote to approve the*  
 23       *compensation of executives as disclosed pursuant to*  
 24       *the Commission’s compensation disclosure rules for*  
 25       *named executive officers (which disclosure shall in-*

1        *clude the compensation committee report, the com-*  
 2        *pensation discussion and analysis, the compensation*  
 3        *tables, and any related materials, to the extent re-*  
 4        *quired by such rules). The shareholder vote shall not*  
 5        *be binding on the issuer or the board of directors and*  
 6        *shall not be construed as overruling a decision by*  
 7        *such board, nor to create or imply any additional fi-*  
 8        *duciary duty by such board, nor shall such vote be*  
 9        *construed to restrict or limit the ability of share-*  
 10       *holders to make proposals for inclusion in such proxy*  
 11       *materials related to executive compensation.*

12                *“(2) SHAREHOLDER APPROVAL OF GOLDEN*  
 13        *PARACHUTE COMPENSATION.—*

14                *“(A) DISCLOSURE.—In any proxy or con-*  
 15        *sent solicitation material (the solicitation of*  
 16        *which is subject to the rules of the Commission*  
 17        *pursuant to subsection (a)) for a meeting of the*  
 18        *shareholders occurring on or after the date that*  
 19        *is 6 months after the date on which final rules*  
 20        *are issued under paragraph (4), at which share-*  
 21        *holders are asked to approve an acquisition,*  
 22        *merger, consolidation, or proposed sale or other*  
 23        *disposition of all or substantially all the assets*  
 24        *of an issuer, the person making such solicitation*  
 25        *shall disclose in the proxy or consent solicitation*

1        *material, in a clear and simple form in accord-*  
2        *ance with regulations to be promulgated by the*  
3        *Commission, any agreements or understandings*  
4        *that such person has with any named executive*  
5        *officers of such issuer (or of the acquiring issuer,*  
6        *if such issuer is not the acquiring issuer) con-*  
7        *cerning any type of compensation (whether*  
8        *present, deferred, or contingent) that is based on*  
9        *or otherwise relates to the acquisition, merger,*  
10       *consolidation, sale, or other disposition of all or*  
11       *substantially all of the assets of the issuer and*  
12       *the aggregate total of all such compensation that*  
13       *may (and the conditions upon which it may) be*  
14       *paid or become payable to or on behalf of such*  
15       *executive officer.*

16            *“(B)     SHAREHOLDER     APPROVAL.—Any*  
17        *proxy or consent or authorization relating to the*  
18        *proxy or consent solicitation material containing*  
19        *the disclosure required by subparagraph (A)*  
20        *shall provide for a separate shareholder vote to*  
21        *approve such agreements or understandings and*  
22        *compensation as disclosed, unless such agree-*  
23        *ments or understandings have been subject to a*  
24        *shareholder vote under paragraph (1). A vote by*  
25        *the shareholders shall not be binding on the*

1        *issuer or the board of directors of the issuer or*  
2        *the person making the solicitation and shall not*  
3        *be construed as overruling a decision by any*  
4        *such person or issuer, nor to create or imply any*  
5        *additional fiduciary duty by any such person or*  
6        *issuer.*

7        “(3) *DISCLOSURE OF VOTES.*—*Every institu-*  
8        *tional investment manager subject to section 13(f)*  
9        *shall report at least annually how it voted on any*  
10       *shareholder vote pursuant to paragraphs (1) or (2) of*  
11       *this section, unless such vote is otherwise required to*  
12       *be reported publicly by rule or regulation of the Com-*  
13       *mission.*

14       “(4) *RULEMAKING.*—*Not later than 6 months*  
15       *after the date of the enactment of the Corporate and*  
16       *Financial Institution Compensation Fairness Act of*  
17       *2009, the Commission shall issue final rules to imple-*  
18       *ment this subsection.*

19       “(5) *EXEMPTION AUTHORITY.*—*The Commission*  
20       *may exempt certain categories of issuers from the re-*  
21       *quirements of this subsection, where appropriate in*  
22       *view of the purpose of this subsection. In determining*  
23       *appropriate exemptions, the Commission shall take*  
24       *into account, among other considerations, the poten-*  
25       *tial impact on smaller reporting issuers.”.*

1       (b) *PROHIBITION ON CLAWBACKS.*—

2               (1) *PROHIBITION.*—No compensation of any ex-  
 3       ecutive of an issuer, having been approved by a ma-  
 4       jority of shareholders pursuant to section 14(i) of the  
 5       Securities Exchange Act of 1934 (as added by sub-  
 6       section (a)), may be subject to any clawback except—

7               (A) in accordance with any contract of such  
 8       executive providing for such a clawback; or

9               (B) in the case of fraud on the part of such  
 10       executive, to the extent provided by Federal or  
 11       State law.

12              (2) *REGULATIONS.*—The Securities and Ex-  
 13       change Commission shall promulgate rules necessary  
 14       to implement and enforce paragraph (1).

15   **SEC. 3. COMPENSATION COMMITTEE INDEPENDENCE.**

16       (a) *STANDARDS RELATING TO COMPENSATION COM-*  
 17       *MITTEES.*—The Securities Exchange Act of 1934 (15 U.S.C.  
 18       78a et seq.) is amended by inserting after section 10A the  
 19       following new section:

20   **“SEC. 10B. STANDARDS RELATING TO COMPENSATION COM-**  
 21       **MITTEES.**

22       “(a) *COMMISSION RULES.*—

23              “(1) *IN GENERAL.*—Effective not later than 9  
 24       months after the date of enactment of the Corporate  
 25       and Financial Institution Compensation Fairness Act

1       of 2009, the Commission shall, by rule, direct the na-  
2       tional securities exchanges and national securities as-  
3       sociations to prohibit the listing of any class of equity  
4       security of an issuer that is not in compliance with  
5       the requirements of any portion of subsections (b)  
6       through (f).

7               “(2) *OPPORTUNITY TO CURE DEFECTS.*—The  
8       rules of the Commission under paragraph (1) shall  
9       provide for appropriate procedures for an issuer to  
10      have an opportunity to cure any defects that would  
11      be the basis for a prohibition under paragraph (1) be-  
12      fore the imposition of such prohibition.

13              “(3) *EXEMPTION AUTHORITY.*—The Commission  
14      may exempt certain categories of issuers from the re-  
15      quirements of subsections (b) through (f), where ap-  
16      propriate in view of the purpose of this section. In de-  
17      termining appropriate exemptions, the Commission  
18      shall take into account, among other considerations,  
19      the potential impact on smaller reporting issuers.

20              “(b) *INDEPENDENCE OF COMPENSATION COMMIT-*  
21      *TEES.*—

22               “(1) *IN GENERAL.*—Each member of the com-  
23      pensation committee of the board of directors of the  
24      issuer shall be independent.



1           “(2) *CRITERIA.*—*In order to be considered to be*  
2           *independent for purposes of this subsection, a member*  
3           *of a compensation committee of an issuer may not,*  
4           *other than in his or her capacity as a member of the*  
5           *compensation committee, the board of directors, or*  
6           *any other board committee accept any consulting, ad-*  
7           *visory, or other compensatory fee from the issuer.*

8           “(3) *EXEMPTION AUTHORITY.*—*The Commission*  
9           *may exempt from the requirements of paragraph (2)*  
10          *a particular relationship with respect to compensa-*  
11          *tion committee members, where appropriate in view*  
12          *of the purpose of this section.*

13          “(4) *DEFINITION.*—*As used in this section, the*  
14          *term ‘compensation committee’ means—*

15               “(A) *a committee (or equivalent body) es-*  
16               *tablished by and amongst the board of directors*  
17               *of an issuer for the purpose of determining and*  
18               *approving the compensation arrangements for*  
19               *the executive officers of the issuer; and*

20               “(B) *if no such committee exists with re-*  
21               *spect to an issuer, the independent members of*  
22               *the entire board of directors.*

23          “(c) *INDEPENDENCE STANDARDS FOR COMPENSATION*  
24          *CONSULTANTS AND OTHER COMMITTEE ADVISORS.*—*Any*  
25          *compensation consultant or other similar adviser to the*

1 *compensation committee of any issuer shall meet standards*  
2 *for independence established by the Commission by regula-*  
3 *tion.*

4 “(d) *COMPENSATION COMMITTEE AUTHORITY RELAT-*  
5 *ING TO COMPENSATION CONSULTANTS.—*

6 “(1) *IN GENERAL.—The compensation committee*  
7 *of each issuer, in its capacity as a committee of the*  
8 *board of directors, shall have the authority, in its sole*  
9 *discretion, to retain and obtain the advice of a com-*  
10 *compensation consultant meeting the standards for inde-*  
11 *pendence promulgated pursuant to subsection (c), and*  
12 *the compensation committee shall be directly respon-*  
13 *sible for the appointment, compensation, and over-*  
14 *sight of the work of such independent compensation*  
15 *consultant. This provision shall not be construed to*  
16 *require the compensation committee to implement or*  
17 *act consistently with the advice or recommendations*  
18 *of the compensation consultant, and shall not other-*  
19 *wise affect the compensation committee’s ability or*  
20 *obligation to exercise its own judgment in fulfillment*  
21 *of its duties.*

22 “(2) *DISCLOSURE.—In any proxy or consent so-*  
23 *licitation material for an annual meeting of the*  
24 *shareholders (or a special meeting in lieu of the an-*  
25 *annual meeting) occurring on or after the date that is*

1       1 year after the date of enactment of the Corporate  
2       and Financial Institution Compensation Fairness Act  
3       of 2009, each issuer shall disclose in the proxy or con-  
4       sent material, in accordance with regulations to be  
5       promulgated by the Commission whether the com-  
6       pensation committee of the issuer retained and ob-  
7       tained the advice of a compensation consultant meet-  
8       ing the standards for independence promulgated pur-  
9       suant to subsection (c).

10           “(3) *REGULATIONS.*—In promulgating regula-  
11       tions under this subsection or any other provision of  
12       law with respect to compensation consultants, the  
13       Commission shall ensure that such regulations are  
14       competitively neutral among categories of consultants  
15       and preserve the ability of compensation committees  
16       to retain the services of members of any such category.

17           “(e) *AUTHORITY TO ENGAGE INDEPENDENT COUNSEL*  
18       *AND OTHER ADVISORS.*—The compensation committee of  
19       each issuer, in its capacity as a committee of the board of  
20       directors, shall have the authority, in its sole discretion, to  
21       retain and obtain the advice of independent counsel and  
22       other advisers meeting the standards for independence pro-  
23       mulgated pursuant to subsection (c), and the compensation  
24       committee shall be directly responsible for the appointment,  
25       compensation, and oversight of the work of such inde-

1 *pendent counsel and other advisers. This provision shall not*  
 2 *be construed to require the compensation committee to im-*  
 3 *plement or act consistently with the advice or recommenda-*  
 4 *tions of such independent counsel and other advisers, and*  
 5 *shall not otherwise affect the compensation committee's abil-*  
 6 *ity or obligation to exercise its own judgment in fulfillment*  
 7 *of its duties.*

8       “(f) *FUNDING.*—Each issuer shall provide for appro-  
 9 *priate funding, as determined by the compensation com-*  
 10 *mittee, in its capacity as a committee of the board of direc-*  
 11 *tors, for payment of compensation—*

12               “(1) *to any compensation consultant to the com-*  
 13 *penetration committee that meets the standards for*  
 14 *independence promulgated pursuant to subsection (c),*  
 15 *and*

16               “(2) *to any independent counsel or other adviser*  
 17 *to the compensation committee.”.*

18       “(b) *STUDY AND REVIEW REQUIRED.*—

19               “(1) *IN GENERAL.*—The Securities and Exchange  
 20 *Commission shall conduct a study and review of the*  
 21 *use of compensation consultants meeting the stand-*  
 22 *ards for independence promulgated pursuant to sec-*  
 23 *tion 10B(c) of the Securities Exchange Act of 1934*  
 24 *(as added by subsection (a)), and the effects of such*  
 25 *use.*

1           (2) *REPORT TO CONGRESS.*—Not later than 2  
 2           years after the rules required by the amendment made  
 3           by this section take effect, the Commission shall sub-  
 4           mit a report to the Congress on the results of the  
 5           study and review required by this paragraph.

6 **SEC. 4. ENHANCED COMPENSATION STRUCTURE REPORT-**  
 7 **ING TO REDUCE PERVERSE INCENTIVES.**

8           (a) *ENHANCED DISCLOSURE AND REPORTING OF COM-*  
 9 *PENSATION ARRANGEMENTS.*—

10           (1) *IN GENERAL.*—Not later than 9 months after  
 11           the date of enactment of this Act, the appropriate  
 12           Federal regulators jointly shall prescribe regulations  
 13           to require each covered financial institution to dis-  
 14           close to the appropriate Federal regulator the struc-  
 15           tures of all incentive-based compensation arrange-  
 16           ments offered by such covered financial institutions  
 17           sufficient to determine whether the compensation  
 18           structure—

19                       (A) is aligned with sound risk management;

20                       (B) is structured to account for the time ho-  
 21                       rizon of risks; and

22                       (C) meets such other criteria as the appro-  
 23                       priate Federal regulators jointly may determine  
 24                       to be appropriate to reduce unreasonable incen-

1            *tives offered by such institutions for employees to*  
 2            *take undue risks that—*

3                    *(i) could threaten the safety and*  
 4                    *soundness of covered financial institutions;*  
 5                    *or*

6                    *(ii) could have serious adverse effects*  
 7                    *on economic conditions or financial sta-*  
 8                    *bility.*

9            *(2) RULES OF CONSTRUCTION.—Nothing in this*  
 10           *subsection shall be construed as requiring the report-*  
 11           *ing of the actual compensation of particular individ-*  
 12           *uals. Nothing in this subsection shall be construed to*  
 13           *require a covered financial institution that does not*  
 14           *have an incentive-based payment arrangement to*  
 15           *make the disclosures required under this subsection.*

16           *(b) PROHIBITION ON CERTAIN COMPENSATION AR-*  
 17           *RANGEMENTS.—Not later than 9 months after the date of*  
 18           *enactment of this Act, and taking into account the factors*  
 19           *described in subparagraphs (A), (B), and (C) of subsection*  
 20           *(a)(1), the appropriate Federal regulators shall jointly pre-*  
 21           *scribe regulations that prohibit any incentive-based pay-*  
 22           *ment arrangement, or any feature of any such arrangement,*  
 23           *that the regulators determine encourages inappropriate*  
 24           *risks by covered financial institutions that—*

1           (1) *could threaten the safety and soundness of*  
2           *covered financial institutions; or*

3           (2) *could have serious adverse effects on economic*  
4           *conditions or financial stability.*

5           (c) *ENFORCEMENT.—The provisions of this section*  
6           *shall be enforced under section 505 of the Gramm-Leach-*  
7           *Bliley Act and, for purposes of such section, a violation of*  
8           *this section shall be treated as a violation of subtitle A of*  
9           *title V of such Act.*

10          (d) *DEFINITIONS.—As used in this section—*

11               (1) *the term “appropriate Federal regulator”*  
12               *means—*

13                       (A) *the Board of Governors of the Federal*  
14                       *Reserve System;*

15                       (B) *the Office of the Comptroller of the Cur-*  
16                       *rency;*

17                       (C) *the Board of Directors of the Federal*  
18                       *Deposit Insurance Corporation;*

19                       (D) *the Director of the Office of Thrift Su-*  
20                       *pervision;*

21                       (E) *the National Credit Union Administra-*  
22                       *tion Board;*

23                       (F) *the Securities and Exchange Commis-*  
24                       *sion; and*

1                   (G) *the Federal Housing Finance Agency;*

2                   *and*

3                   (2) *the term “covered financial institution”*

4                   *means—*

5                   (A) *a depository institution or depository*  
6                   *institution holding company, as such terms are*  
7                   *defined in section 3 of the Federal Deposit Insur-*  
8                   *ance Act (12 U.S.C. 1813);*

9                   (B) *a broker-dealer registered under section*  
10                  *15 of the Securities Exchange Act of 1934 (15*  
11                  *U.S.C. 78o);*

12                  (C) *a credit union, as described in section*  
13                  *19(b)(1)(A)(iv) of the Federal Reserve Act;*

14                  (D) *an investment advisor, as such term is*  
15                  *defined in section 202(a)(11) of the Investment*  
16                  *Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11));*

17                  (E) *the Federal National Mortgage Associa-*  
18                  *tion;*

19                  (F) *the Federal Home Loan Mortgage Cor-*  
20                  *poration; and*

21                  (G) *any other financial institution that the*  
22                  *appropriate Federal regulators, jointly, by rule,*  
23                  *determine should be treated as a covered finan-*  
24                  *cial institution for purposes of this section.*



1       (e) *EXEMPTION FOR CERTAIN FINANCIAL INSTITU-*  
2 *TIONS.—The requirements of this section shall not apply*  
3 *to covered financial institutions with assets of less than*  
4 *\$1,000,000,000.*

5       (f) *GAO STUDY.—*

6           (1) *STUDY REQUIRED.—*

7               (A) *IN GENERAL.—The Comptroller General*  
8 *of the United States shall carry out a study to*  
9 *determine whether there is a correlation between*  
10 *compensation structures and excessive risk tak-*  
11 *ing.*

12               (B) *FACTORS TO CONSIDER.—In carrying*  
13 *out the study required under subparagraph (A),*  
14 *the Comptroller General shall—*

15                   (i) *consider compensation structures*  
16 *used by companies from 2000 to 2008; and*

17                   (ii) *compare companies that failed, or*  
18 *nearly failed but for government assistance,*  
19 *to companies that remained viable through-*  
20 *out the housing and credit market crisis of*  
21 *2007 and 2008, including the compensation*  
22 *practices of all such companies.*

23               (C) *DETERMINING COMPANIES THAT FAILED*  
24 *OR NEARLY FAILED.—In determining whether a*  
25 *company failed, or nearly failed but for govern-*

1           *ment assistance, for purposes of subparagraph*  
2           *(B)(ii), the Comptroller General shall focus on—*

3                     *(i) companies that received exceptional*  
4                     *assistance under the Troubled Asset Relief*  
5                     *Program under title I of the Emergency*  
6                     *Economic Stabilization Act of 2009 (12*  
7                     *U.S.C. 5211 et seq.) or other forms of sig-*  
8                     *nificant government assistance, including*  
9                     *under the Automotive Industry Financing*  
10                    *Program, the Targeted Investment Program,*  
11                    *the Asset Guarantee Program, and the Sys-*  
12                    *temically Significant Failing Institutions*  
13                    *Program;*

14                    *(ii) the Federal National Mortgage As-*  
15                    *sociation;*

16                    *(iii) the Federal Home Loan Mortgage*  
17                    *Corporation; and*

18                    *(iv) companies that participated in the*  
19                    *Security and Exchange Commission’s Con-*  
20                    *solidated Supervised Entities Program as of*  
21                    *January 2008.*

22           (2) *REPORT.—Not later than the end of the 1-*  
23           *year period beginning on the date of the enactment of*  
24           *this Act, the Comptroller General shall issue a report*

- 1 *to the Congress containing the results of the study re-*
- 2 *quired under paragraph (1).*

Union Calendar No. 131

11TH CONGRESS  
1ST Session

**H. R. 3269**

[Report No. 111-236]

**A BILL**

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JULY 30, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed